

1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@Olivelaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

12 -against-

13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

16 **DEFENDANTS' NOTICE OF MOTION**
17 **FOR DISMISSAL OR CHANGE OF**
18 **VENUE**

19 **PLEASE TAKE NOTICE** that upon the annexed Affidavit of Shi Zhong Ou,
20 Affirmation of Laurence H. Olive, Esq., and upon the accompanying Memorandum of Law in
21 support of the motion, and the pleadings herein, defendants, by and through their undersigned
22 attorney, Laurence H. Olive, Esq., file this Motion To Dismiss or for Change of Venue before
23 the Honorable P. Kevin Castel as follows:
24

25 I.

26 Defendants are charged with one count of violating state and federal law as to payment of
27 minimum wages, and a final count of discrimination and other various torts.
28

29 II.

30 Defendants seek to either dismiss plaintiff's claim pursuant to F.R.C.P 12(b) or to change
31 the venue of these causes from the Southern District of New York to some other United States
32

1 District Court in the State of Alabama since Alabama is the more appropriate state where the
2 claims should be heard.

3
4 III.

5 Defendants seek dismissal pursuant to F.R.C.P. 12 (b)(1), (3) and (6) based upon lack of
6 subject matter jurisdiction, improper venue, and failure to state a claim upon which relief can be
7 granted.

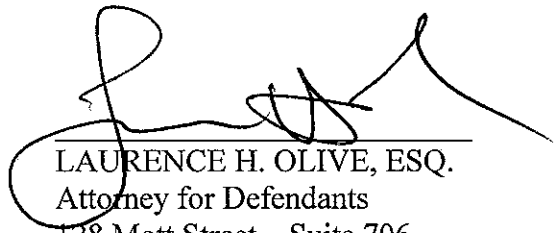
8
9 IV.

10 In the alternative, Defendants seek transfer pursuant to 28 U.S.C. §1404 based upon (1)
11 the convenience of the parties; (2) the convenience of the witnesses; (3) the location of relevant
12 documents and the relative ease of access to those sources of proof; (4) the situs of the operative
13 events in issue; (5) the availability of process to compel the attendance of unwilling witnesses;
14 (6) the relative means of the parties; (7) the comparative familiarity of each district with the
15 governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) judicial efficiency
16 and the interests of justice.

17 For these reasons, Defendants respectfully request that this case either be dismissed or be
18 transferred to the District of Alabama for trial.

19
20
21
22 **I declare under penalty of perjury that the foregoing is true and correct.**

23
24
25 Dated: New York, New York
26 June 17, 2008

27
28
29
30
31
32

LAURENCE H. OLIVE, ESQ.
Attorney for Defendants
128 Mott Street – Suite 706
New York, NY 10013
(T)212-608-1818
(F)212-608-0505

LAURENCE H. OLIVE, ESQ. (LO-5598)
128 Mott Street – Suite 706
New York, New York 10013
212-608-1818
212-608-0505 (fax)
Larry@Olivelaw1.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHUIFA YING.,

Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

-against-

CHINA CHEF, INC.,
SHIZHONG OU, and LIMING HUANG,
Defendants.

AFFIDAVIT

STATE OF ALABAMA: ss
COUNTY OF

Under penalties of perjury, I, Shi Zhong Ou, do hereby swear and affirm as follows:

1. I make this Affidavit in support of the motion of all defendants to either dismiss plaintiff's complaint, or to change the venue of the case to Alabama.

2. The plaintiff is married to my wife's older sister.

3. The plaintiff came to the United States in 2003 as an illegal alien.

4. At first, he worked in New Jersey, but would come to my home in Alabama for the Chinese New Year.

5. My wife's mother and sister asked me and my wife (co-defendant Liming Huang) to provide care, food and shelter to the plaintiff at our home in Alabama in 2006.

1 6. The plaintiff would come to the restaurant and help out, and we would pay
2 him for whatever time he worked.
3

4 7. During the time that he stayed with us, he discussed with me how he can obtain
5 a legal status to stay in the United States of America. He told me that the only way for him to
6 obtain a legal status would be to make illegal fraudulent documents and lie about the date he
7 entered the US. I strongly disagreed with him and told him that making fraudulent documents
8 and lying to an immigration judge is a serious offense, but he insisted that he should do it and
9 left to New York to attend court regarding his immigration case on March of 2007.
10
11

12 8. His claims for outstanding wages and the like are completely false and without
13 foundation.
14

15 9. During the plaintiff's residency in our home in Alabama, he borrowed \$7,000.00 from
16 me. He also borrowed an additional \$3,000.00 of my money through my mother in China. None
17 of these loans have been repaid.
18

19 10. Both my wife (Li Ming Huang -- the co-defendant) and I reside in Alabama, and the
20 business, China Chef, Inc. is also located in Alabama.
21

22 11. All of our witnesses and evidence to rebut plaintiff's claims are in Alabama.

23 12. It would be a hardship for my wife and me to have to litigate this claim in New York.
24

25 13. My wife and I have read the allegations of the complaint, but they are confusing and
26 difficult to understand.

27 For the above stated reasons, I respectfully request that complaint be dismissed or the
28 entire matter be transferred to Federal Court in Alabama.
29

30 Sworn to and subscribed before me
31 this ____ day of June, 2008.

Shi Zhong Ou

6. The plaintiff would come to the restaurant and help out, and we would pay him for whatever time he worked.

7. During the time that he stayed with us, he discussed with me how he can obtain a legal status to stay in the United States of America. He told me that the only way for him to obtain a legal status would be to make illegal fraudulent documents and lie about the date he entered the US. I strongly disagreed with him and told him that making fraudulent documents and lying to an immigration judge is a serious offense, but he insisted that he should do it and left to New York to attend court regarding his immigration case on March of 2007.

8. His claims for outstanding wages and the like are completely false and without foundation.

9. During the plaintiff's residency in our home in Alabama, he borrowed \$7,000.00 from me. He also borrowed an additional \$3,000.00 of my money through my mother in China. None of these loans have been repaid.

10. Both my wife (Li Ming Huang - the co-defendant) and I reside in Alabama, and the business, China Chef, Inc. is also located in Alabama.

11. All of our witnesses and evidence to rebut plaintiff's claims are in Alabama.

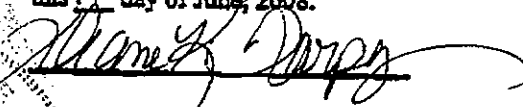
12. It would be a hardship for my wife and me to have to litigate this claim in New York.

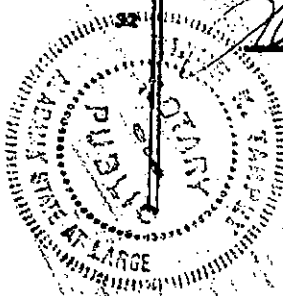
13. My wife and I have read the allegations of the complaint, but they are confusing and difficult to understand.

For the above stated reasons, I respectfully request that complaint be dismissed or the entire matter be transferred to Federal Court in Alabama.

Sworn to and subscribed before me
this 19th day of June, 2008.


Shi Zhong Ou


DIANE TARPEY
Notary Public, State of Alabama - 2 -
Alabama State At Large
My Commission Expires
January 17, 2010



1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@Olivelaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

12 -against-

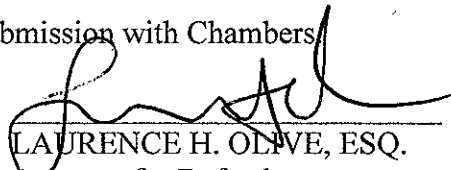
13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

AFFIRMATION OF COUNSEL

16 I, Laurence H. Olive, Esq., declare under penalty of perjury as follows:

- 17
- 18 1. I represent the defendants in the within matter.
- 19 2. On June 18, 2008, I contacted plaintiff's attorney requesting an extension to file the
- 20 within papers.
- 21
- 22 3. He requested a written submission. See attached.
- 23
- 24 4. On June 20, 2008, counsel indicated he had already filed for a default judgment and
- 25 was not predisposed to consent to allow me to file out of time.
- 26
- 27 5. According to the Court docket, no default has been entered as yet.
- 28
- 29 6. Accordingly, I request the Court to consider my filing.
- 30
- 31 7. I will be filing courtesy copies of this submission with Chambers
- 32

Dated: June 22, 2008


LAURENCE H. OLIVE, ESQ.
Attorney for Defendants

LAURENCE H. OLIVE
ATTORNEY AT LAW

Larry@OLIVELAW1.com

Admitted in NJ & NY

460 BLOOMFIELD AVENUE
MONTCLAIR, NEW JERSEY 07042
Tel: (973) 746 – 6623
Fax: (973) 746 – 6625

Web site: www.Olivelaw1.net

128 Mott Street
New York, New York 10013
Tel: (212) 608 – 1818
Fax: (212) 608 - 0505

June 18, 2008 (Revised)

Frank Xu, LLP
305 Broadway
New York, NY 10007

Re: Shuifa Ying v. China Chef, etal

Dear Mr. Xu:

This will confirm my conversation with you wherein I confirmed that I will be representing the defendants in the above matter. I have been so retained.

You have advised me that you have requested the entry of a default. I have requested that sign a Consent Order to vacate the default. Please let me know your decision by the end of business tomorrow. Otherwise, I will file a motion.

Thank you.

LHO:ho
Via fax: 212-901-0499

Yours very truly,


LAURENCE H. OLIVE

1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@Olivelaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

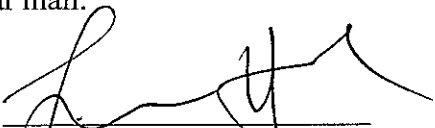
12 -against-

13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

16 **AFFIRMATION OF SERVICE**

17 I, Laurence H. Olive, Esq., declare under penalty of perjury that I have served a copy of
18 the attached Notice of Motion, Affirmation & Memorandum of Law, upon Frank Xu, LLP, 305
19 Broadway, Ste 701, New York, NY 10007 by regular mail.

20 Dated: New York, NY
21 June 26, 2008

22 
23 LAURENCE H. OLIVE, ESQ.
24 Attorney for Defendants
25 128 Mott Street – Suite 706
26 New York, NY 10013
27 (T)212-608-1818
28 (F)212-608-0505
29
30
31
32

1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@OliveLaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

12 -against-

13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

16 **DEFENDANTS' NOTICE OF MOTION**
17 **FOR DISMISSAL OR CHANGE OF**
18 **VENUE**

19 **PLEASE TAKE NOTICE** that upon the annexed Affidavit of Shi Zhong Ou,
20 Affirmation of Laurence H. Olive, Esq., and upon the accompanying Memorandum of Law in
21 support of the motion, and the pleadings herein, defendants, by and through their undersigned
22 attorney, Laurence H. Olive, Esq., file this Motion To Dismiss or for Change of Venue before
23 the Honorable P. Kevin Castel as follows:
24

25 I.

26 Defendants are charged with one count of violating state and federal law as to payment of
27 minimum wages, and a final count of discrimination and other various torts.
28

29 II.

30 Defendants seek to either dismiss plaintiff's claim pursuant to F.R.C.P 12(b) or to change
31 the venue of these causes from the Southern District of New York to some other United States
32

1 District Court in the State of Alabama since Alabama is the more appropriate state where the
2 claims should be heard.

3
4 III.

5 Defendants seek dismissal pursuant to F.R.C.P. 12 (b)(1), (3) and (6) based upon lack of
6 subject matter jurisdiction, improper venue, and failure to state a claim upon which relief can be
7 granted.

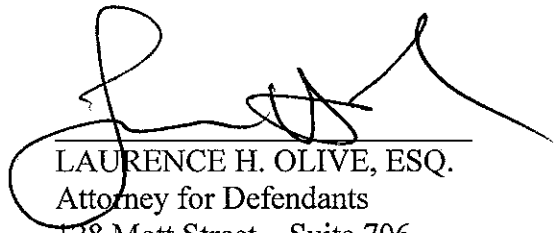
8
9 IV.

10 In the alternative, Defendants seek transfer pursuant to 28 U.S.C. §1404 based upon (1)
11 the convenience of the parties; (2) the convenience of the witnesses; (3) the location of relevant
12 documents and the relative ease of access to those sources of proof; (4) the situs of the operative
13 events in issue; (5) the availability of process to compel the attendance of unwilling witnesses;
14 (6) the relative means of the parties; (7) the comparative familiarity of each district with the
15 governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) judicial efficiency
16 and the interests of justice.

17 For these reasons, Defendants respectfully request that this case either be dismissed or be
18 transferred to the District of Alabama for trial.

19
20
21
22 **I declare under penalty of perjury that the foregoing is true and correct.**

23
24
25 Dated: New York, New York
26 June 17, 2008

27
28
29
30
31
32

LAURENCE H. OLIVE, ESQ.
Attorney for Defendants
128 Mott Street – Suite 706
New York, NY 10013
(T)212-608-1818
(F)212-608-0505

1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@Olivelaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

12 -against-

13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

16 **AFFIDAVIT**

17 STATE OF ALABAMA: ss
18 COUNTY OF

19 Under penalties of perjury, I, Shi Zhong Ou, do hereby swear and affirm as follows:

20 1. I make this Affidavit in support of the motion of all defendants to either dismiss
21 plaintiff's complaint, or to change the venue of the case to Alabama.

22 2. The plaintiff is married to my wife's older sister.

23 3. The plaintiff came to the United States in 2003 as an illegal alien.

24 4. At first, he worked in New Jersey, but would come to my home in Alabama for
25 the Chinese New Year.

26 5. My wife's mother and sister asked me and my wife (co-defendant Liming Huang)
27 to provide care, food and shelter to the plaintiff at our home in Alabama in 2006 .
28
29
30
31
32

1 6. The plaintiff would come to the restaurant and help out, and we would pay
2 him for whatever time he worked.

3
4 7. During the time that he stayed with us, he discussed with me how he can obtain
5 a legal status to stay in the United States of America. He told me that the only way for him to
6 obtain a legal status would be to make illegal fraudulent documents and lie about the date he
7 entered the US. I strongly disagreed with him and told him that making fraudulent documents
8 and lying to an immigration judge is a serious offense, but he insisted that he should do it and
9 left to New York to attend court regarding his immigration case on March of 2007.
10

11
12 8. His claims for outstanding wages and the like are completely false and without
13 foundation.

14
15 9. During the plaintiff's residency in our home in Alabama, he borrowed \$7,000.00 from
16 me. He also borrowed an additional \$3,000.00 of my money through my mother in China. None
17 of these loans have been repaid.
18

19 10. Both my wife (Li Ming Huang -- the co-defendant) and I reside in Alabama, and the
20 business, China Chef, Inc. is also located in Alabama.
21

22 11. All of our witnesses and evidence to rebut plaintiff's claims are in Alabama.

23 12. It would be a hardship for my wife and me to have to litigate this claim in New York.

24 13. My wife and I have read the allegations of the complaint, but they are confusing and
25 difficult to understand.
26

27 For the above stated reasons, I respectfully request that complaint be dismissed or the
28 entire matter be transferred to Federal Court in Alabama.
29

30 Sworn to and subscribed before me
31 this ____ day of June, 2008.

Shi Zhong Ou

6. The plaintiff would come to the restaurant and help out, and we would pay him for whatever time he worked.

7. During the time that he stayed with us, he discussed with me how he can obtain a legal status to stay in the United States of America. He told me that the only way for him to obtain a legal status would be to make illegal fraudulent documents and lie about the date he entered the US. I strongly disagreed with him and told him that making fraudulent documents and lying to an immigration judge is a serious offense, but he insisted that he should do it and left to New York to attend court regarding his immigration case on March of 2007.

8. His claims for outstanding wages and the like are completely false and without foundation.

9. During the plaintiff's residency in our home in Alabama, he borrowed \$7,000.00 from me. He also borrowed an additional \$3,000.00 of my money through my mother in China. None of these loans have been repaid.

10. Both my wife (Li Ming Huang - the co-defendant) and I reside in Alabama, and the business, China Chef, Inc. is also located in Alabama.

11. All of our witnesses and evidence to rebut plaintiff's claims are in Alabama.

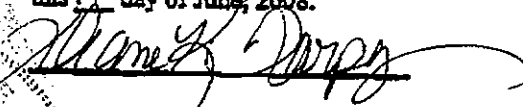
12. It would be a hardship for my wife and me to have to litigate this claim in New York.

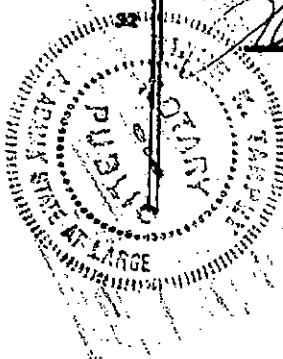
13. My wife and I have read the allegations of the complaint, but they are confusing and difficult to understand.

For the above stated reasons, I respectfully request that complaint be dismissed or the entire matter be transferred to Federal Court in Alabama.

Sworn to and subscribed before me
this 19th day of June, 2008.


Shi Zhong Ou


DIANE TARPEY
Notary Public, State of Alabama - 2 -
Alabama State At Large
My Commission Expires
January 17, 2010



LAURENCE H. OLIVE, ESQ. (LO-5598)
128 Mott Street – Suite 706
New York, New York 10013
212-608-1818
212-608-0505 (fax)
Larry@Olivelaw1.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHUIFA YING.,

Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

-against-

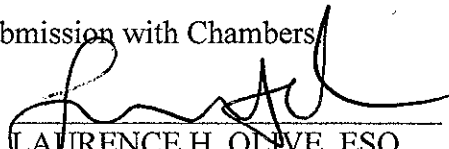
CHINA CHEF, INC.,
SHIZHONG OU, and LIMING HUANG,
Defendants.

AFFIRMATION OF COUNSEL

I, Laurence H. Olive, Esq., declare under penalty of perjury as follows:

1. I represent the defendants in the within matter.
2. On June 18, 2008, I contacted plaintiff's attorney requesting an extension to file the within papers.
3. He requested a written submission. See attached.
4. On June 20, 2008, counsel indicated he had already filed for a default judgment and was not predisposed to consent to allow me to file out of time.
5. According to the Court docket, no default has been entered as yet.
6. Accordingly, I request the Court to consider my filing.
7. I will be filing courtesy copies of this submission with Chambers

Dated: June 22, 2008


LAURENCE H. OLIVE, ESQ.
Attorney for Defendants

LAURENCE H. OLIVE
ATTORNEY AT LAW

Larry@OLIVELAW1.com

Admitted in NJ & NY

460 BLOOMFIELD AVENUE
MONTCLAIR, NEW JERSEY 07042
Tel: (973) 746 – 6623
Fax: (973) 746 – 6625

Web site: www.Olivelaw1.net

128 Mott Street
New York, New York 10013
Tel: (212) 608 – 1818
Fax: (212) 608 - 0505

June 18, 2008 (Revised)

Frank Xu, LLP
305 Broadway
New York, NY 10007

Re: Shuifa Ying v. China Chef, etal

Dear Mr. Xu:

This will confirm my conversation with you wherein I confirmed that I will be representing the defendants in the above matter. I have been so retained.

You have advised me that you have requested the entry of a default. I have requested that sign a Consent Order to vacate the default. Please let me know your decision by the end of business tomorrow. Otherwise, I will file a motion.

Thank you.

LHO:ho
Via fax: 212-901-0499

Yours very truly,


LAURENCE H. OLIVE

1 LAURENCE H. OLIVE, ESQ. (LO-5598)
2 128 Mott Street – Suite 706
3 New York, New York 10013
4 212-608-1818
5 212-608-0505 (fax)
6 Larry@Olivelaw1.com

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 SHUIFA YING.,

11 Plaintiff,

CASE NO.
08 CIV. 4282 (PKC)

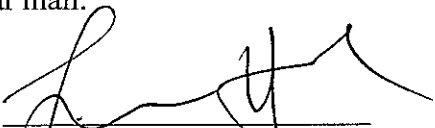
12 -against-

13 CHINA CHEF, INC.,
14 SHIZHONG OU, and LIMING HUANG,
15 Defendants.

16 **AFFIRMATION OF SERVICE**

17 I, Laurence H. Olive, Esq., declare under penalty of perjury that I have served a copy of
18 the attached Notice of Motion, Affirmation & Memorandum of Law, upon Frank Xu, LLP, 305
19 Broadway, Ste 701, New York, NY 10007 by regular mail.

20 Dated: New York, NY
21 June 26, 2008

22 
23 LAURENCE H. OLIVE, ESQ.
24 Attorney for Defendants
25 128 Mott Street – Suite 706
26 New York, NY 10013
27 (T)212-608-1818
28 (F)212-608-0505
29
30
31
32